

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY, SR.,  
Plaintiff,  
v.  
AIG CLAIMS, INC.,  
Defendant.

No. 2:20-cv-00301 TLN AC PS

FINDINGS AND RECOMMENDATIONS

This matter is before the undersigned pursuant to Local Rule 302(c)(21). On July 8, 2020, District Judge Troy L. Nunley adopted the undersigned's findings and recommendations that this case be dismissed due to plaintiff's failure to prosecute. ECF Nos. 8 (Order) and 9 (Judgment). On September 21, 2020, plaintiff filed a motion for reconsideration, which the undersigned construes as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) because plaintiff "demands this court case be replaced active[.]" ECF No. 10 at 2. For the reasons that follow, plaintiff's motion should be DENIED, and the court should disregard all further filings in this case.

I. ANALYSIS

Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration of a final judgment or any order where one of more of the following is shown: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence,

1 could not have been discovered within twenty-eight days of entry of judgment; (3) fraud,  
2 misrepresentation, or misconduct of an opposing party; (4) voiding of the judgment; (5)  
3 satisfaction of the judgment; and (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). A  
4 motion for reconsideration on any of these grounds must be brought within a reasonable time, and  
5 no later than one year, of the entry of the judgment or the order being challenged. Id. “Motions  
6 for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are  
7 addressed to the sound discretion of the district court...” Allmerica Financial Life Insurance and  
8 Annunity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

9 Plaintiff’s motion does not satisfy any of the elements described above. This case was  
10 dismissed for failure to properly pursue the action, specifically by plaintiff’s refusal to submit an  
11 amended complaint after the first complaint was found inadequate for service under the in forma  
12 pauperis statute. ECF No. 6. The present motion does not identify any Rule 60(b) grounds for  
13 revisiting that conclusion. Rather, the motion is based on plaintiff’s lack of consent to a  
14 magistrate judge in this case. Plaintiff argues that because he did not consent to a magistrate  
15 judge, it was improper for Judge Nunley to adopt the undersigned’s findings and  
16 recommendations. ECF No. 10 at 2.

17 Plaintiff misunderstands the process. Because plaintiff represented himself in this action,  
18 the case was referred to the magistrate judge pursuant to the Local Rules of the Eastern District of  
19 California. Local Rule 302(c)(21). This referral meant that the magistrate judge was responsible  
20 for making findings and recommendations regarding dispositive matters, with the district judge  
21 having ultimate decision-making authority, as authorized by 28 U.S.C. § 636(b)(1)(B). If the  
22 parties had consented to magistrate judge jurisdiction overall, as authorized by 28 U.S.C. §  
23 636(c)(1), the undersigned could have simply issued an order disposing of the case without  
24 involving the district judge. Because there was not consent, the undersigned made a  
25 recommendation to the district judge, who independently reviewed the case and adopted the  
26 recommendation by issuing a final order. Plaintiff was provided an opportunity to object to the  
27 Findings and Recommendations before the district judge acted upon them.

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Because plaintiff provides no grounds for reopening this case, the case should not be reopened.

## II. CONCLUSION

For the foregoing reasons, IT IS HEREBY RECOMMENDED that plaintiff's motion for relief from judgment, ECF No. 10, be DENIED, and that all further filings in this case be DISREGARDED.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. *Id.*; *see also* Local Rule 304(b). Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order.

Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

DATED: September 22, 2020

Allison Claire  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE